

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DR. MARK A. BARRY,

Plaintiff,

v.

**DEPUY SYNTHES PRODUCTS,
INC. ET AL.**

Defendants.

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Civil Action No. 2:17-cv-03003-PD

PROPOSED STIPULATED ORDER

AND NOW, this 30th day of August 2021, having met and conferred about disputed evidentiary issues in an effort to streamline trial and avoid disputes that would otherwise be raised *in limine*, the parties hereby stipulate and agree as follows:

1. DePuy shall not offer at trial any opinion testimony through Mr. Sherman that the 2003 surgeries performed by Dr. Barry qualified as public uses or commercial sales or offers for sale or that the 2003 surgeries were not experimental uses of Dr. Barry's invention. As part of this, Mr. Sherman shall not testify as to the opinions contained in Dr. Bridwell's report or Mr. Sherman's incorporation of that report.
2. DePuy shall not refer to Dr. Barry as a "Patent Troll" or "Non-Practicing Entity." DePuy's witnesses shall not testify that Dr. Barry was "frustrated by his lack of recognition as a leading spine surgeon."

3. Dr. Barry shall not introduce evidence or testimony regarding Defendants' overall revenues, profits, value, or other similar financial metrics, including at least the statements at ¶ 50 of Ms. Schenk's expert report.
4. The parties agree that the starting date for calculating damages for the '121 patent is July 5, 2017, the date of service of the complaint. Dr. Barry shall not present any evidence, testimony, or argument that DePuy had actual notice of the '121 patent prior to that date.

Dated: August 30, 2021

Counsel for Plaintiff:

**KILPATRICK TOWNSEND & STOCKTON,
LLP**

By: /s/ D. Clay Holloway
D. Clay Holloway (*pro hac vice*)
Mitchell G. Stockwell (*pro hac vice*)
Suite 2800, 1100 Peachtree Street NE
Atlanta, GA, 30309-4528
(404) 815-6537
cholloway@kilpatricktownsend.com
mstockwell@kilpatricktownsend.com

Dario Alexander Machleidt (*pro hac vice*)
Kathleen R. Geyer (*pro hac vice*)
Suite 3700, 1420 Fifth Avenue
Seattle, WA 98101
(206) 467-9600
dmachleidt@kilpatricktownsend.com
kgeyer@kilpatricktownsend.com

Andrew W. Rinehart (*pro hac vice*)
1001 West Fourth Street
Winston-Salem, NC 27101
(336) 607-7312
arinehart@kilpatricktownsend.com

Counsel for Defendants:

JONES DAY

By: /s/ Calvin P. Griffith
Calvin Griffith (*pro hac vice*)
Patrick Norton (*pro hac vice*)
Kenneth Luchesi (*pro hac vice*)
T. Kaitlin Crowder (*pro hac vice*)
910 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 586-7347
Facsimile: (216) 579-0212
cpgriffith@jonesday.com
pjnorton@jonesday.com
kluchesi@jonesday.com
kcrowder@jonesday.com

Tracy Stitt (*pro hac vice*)
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3641
Facsimile: (202) 626-1700
tastitt@jonesday.com

**AKIN GUMP STRUSS HAUER & FELD
LLP**

Taylor J. Pfingst (*pro hac vice*)
1801 Century Park East, Suite 2300
Los Angeles, CA 90067
(310) 966-4955
tpfingst@kilpatricktownsend.com

April Abele Isaacson (*pro hac vice*)
Two Embarcadero Center, Suite 1900
San Francisco, CA USA 94111
(415) 273-8306
aisaacson@kilpatricktownsend.com

LEVAN MUHIC STAPLETON, LLC

By: /s/ Jonathan L. Cochran
Jonathan L. Cochran (Attorney ID No.
314382)
One Liberty Place
1650 Market St, Suite 3600
Philadelphia, PA 19103
(215) 561-5210
jcochran@levanmuhic.com

Counsel for Plaintiff Dr. Mark A. Barry

Steven D. Maslowski (Attorney Id No.
84368)
Two Commerce Square
2001 Market Street, Suite 4100
Philadelphia, PA 19103
Telephone: (215) 965-1200
smaslowski@akingump.com

*Counsel for Defendants DePuy Synthes
Products Inc., Medical Device Business
Services, Inc., and DePuy Synthes Sales,
Inc. (d/b/a DePuy Synthes Spine)*

BY THE COURT:

Honorable Paul S. Diamond